

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of Eugene M. Evasku

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Barbara L. Neilson at 9:30 a.m. on May 21, 2010, at the Winona County Office Building, 202 West Third Street, Winona, Minnesota. The record remained open until July 1, 2010, for the receipt of post-hearing submissions. Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). Eugene M. Evasku (Respondent) appeared on his own behalf without counsel.

The hearing was held pursuant to the Notice of Hearing issued on October 28, 2009. The hearing, originally scheduled for December 17, 2009, was continued upon request of the parties. By letter dated May 5, 2010, the Department amended the Allegations included in the Notice for Hearing to omit allegations regarding the Jonsgaards, the Tostensons and Gloria Anderson (paragraphs 8-10). The Department pursued all other Allegations originally noticed on October 28, 2009.

STATEMENT OF ISSUES

1. Did the Respondent:
 - a. provide incorrect, misleading, incomplete or material untrue information on a license application, in violation of Minn. Stat. § 60K.43, subd. 1(1) (2008);¹
 - b. demonstrate that he is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the Commissioner, in violation of Minn. Stat. § 45.027, subd. 7(a)(4);
 - c. use fraudulent, coercive, or dishonest practices, in violation of Minn. Stat. § 60K.43, subd. 1(8);

¹ All citations to Minnesota Statutes are to the 2008 edition and all citations to the Minnesota Rules are to the 2007 version.

- d. utilize deceptive or dishonest practices, in violation of Minn. Stat. § 60K.43, subd. 1(7);
- e. fail to report administrative actions taken against his license in another jurisdiction, in violation of Minn. Stat. § 60K.54, subd. 1;
- f. have an insurance producer's license denied or subjected to other disciplinary action in another jurisdiction, in violation of Minn. Stat. § 60K.43, subd. 1(9);
- g. engage in unfair and deceptive acts in violation of Minn. Stat. § 72A.19, subd. 1;
- h. misrepresent the terms of an actual or proposed insurance contract or application for insurance in violation of Minn. Stat. § 60K.43, subd. 1(5);
- i. fail to comply with a court order imposing child support obligations, in violation of Minn. Stat. § 60K.43, subd. 1(13); or
- j. fail to observe high standards of commercial honor and just and equitable principles of trade in his conduct, in violation of Minn. R. 2795.1000 (2007)?

2. If so, is disciplinary action warranted?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Respondent was a licensed Minnesota resident insurance producer from 1971 to 2009.² During certain periods in his insurance career, he also held non-resident insurance producer licenses in Iowa and Wisconsin. Respondent voluntarily surrendered his Minnesota license on August 12, 2009, during the Department's investigation of this matter. His Wisconsin license is inactive because of his failure to pay the required license fee.³ Respondent is now retired and he does not participate in the insurance industry.⁴

² Testimony of Eugene Evasku; Ex. 4.

³ Ex. 1, p. 1; Ex. 2; Testimony of Cameron Jenkins; Test. of E. Evasku.

⁴ Test. of E. Evasku.

2. From January 2006 to October 2008, Respondent was an agent representing Pennsylvania Life and Pyramid Life. One of the insurance products Respondent sold was a Medicare Advantage Plan called "Today's Options."⁵

Failure to Disclose Disciplinary Actions

3. In 1985, Respondent entered into a consent order with the Department based on allegations that he sold duplicate Medicare supplement insurance to senior citizens. As a result of the consent order, his insurance producer's license was suspended for four months.⁶

4. In 1987, Respondent entered into a consent order with the Department based on allegations that he improperly replaced Medicare supplemental insurance policies, converted premiums to his own use, and failed to remit insureds' applications to an insurance company. His license was suspended for two years as a result of the consent order. The Department also ordered Respondent to make full restitution of all debts arising out of his improper actions and file a \$10,000 bond with the Commissioner before he could act as an insurance agent in the state after the two-year suspension expired.⁷

5. On August 19, 1996, Respondent submitted an application to the Department to reactivate his insurance license. On the application, Respondent indicated that he had never been the subject of an investigation or inquiry by any division of the Minnesota Department of Commerce, or any other regulatory agency. Respondent also checked a box to indicate that his insurance license had previously been suspended or revoked. Respondent provided no explanation for the suspension or revocation.⁸

6. On September 5, 2001, Respondent entered into a consent order with the Department that suspended his insurance agent's license for twelve days based on allegations that he sold a life insurance policy without first reviewing the suitability of the policy.⁹

7. On January 26, 2007, Respondent applied for a Wisconsin insurance license, and indicated that no disciplinary actions had been taken against him in any other state. Upon investigation, the State of Wisconsin discovered that the State of Minnesota had previously taken administrative action against Respondent's license. Because Respondent did not disclose the previous administrative action on his application, the State of Wisconsin denied his application. Respondent then submitted a letter explaining the 2001 suspension of his license by the State of Minnesota.¹⁰ On March 16, 2007, the State of Wisconsin notified Respondent by letter that it would grant

⁵ Testimony of John Mackin, Jr.

⁶ Ex. 5; Test. of E. Evasku.

⁷ Ex. 4; Test. of E. Evasku.

⁸ Ex. 7.

⁹ Ex. 3; Test. of E. Evasku.

¹⁰ Ex. 6; Test. of E. Evasku.

him the license as of April 17, 2007, but imposed a 31-day denial of the license based on Wisconsin Statute § 628.04, and Section Ins 6.59 (5)(b), (c) and (d) of the Wisconsin Administrative Code. Those laws and rules provide that applications can be denied if the applicant fails to accurately complete an application form and fails to disclose administrative actions. The Wisconsin Commissioner of Insurance wrote explicitly on the bottom of the letter: "This license denial for 31 days is an administrative action and will be reported to other states. You should check with each state that you are licensed in to see if you are required to report this administrative action. This administrative action should be disclosed on future applications."¹¹ There is no evidence that Respondent ever reported the State of Wisconsin administrative action to the Department.

8. On October 20, 2008, Pennsylvania Life Insurance Company terminated Respondent's insurance producer's appointment. This action was taken for several reasons. First, Pennsylvania Life learned that Respondent had become appointed with other unaffiliated companies, in violation of his contract with Pennsylvania Life. Second, Pennsylvania Life had discovered that Respondent was contacting existing Medicare Advantage members in an effort to replace Pyramid Life coverage, which also violated his contractual obligations. Finally, Respondent had failed to inform Pennsylvania Life of the enforcement actions taken against his license in 1985 and 1987. These enforcement actions should have been disclosed in his employment application, which Respondent signed on January 2, 2006. Respondent did submit an explanation of the 2001 license suspension with his application. If Respondent had disclosed the 1985 and 1987 licensing actions, Pennsylvania Life would not have appointed him.¹²

9. Throughout 2008 and 2009, Respondent submitted sub-agent or special agent applications to fourteen insurance entities. Each application asked whether the applicant's license had ever been suspended or revoked. None of the applications limited the disclosure period to the last five, ten or even twenty years. Instead, the time period in each of the questions was open-ended. Respondent failed to disclose the 1985 and 1987 disciplinary actions in all of the fourteen applications, including Equitable Life & Casualty (application date May 5, 2009);¹³ Mutual of Omaha Insurance Company (application date May 5, 2009);¹⁴ Anthem Blue Cross and Blue Shield (application date December 3, 2008);¹⁵ Coventry Health Care, Inc. (application date November 21, 2008);¹⁶ Prudential Financial (application date September 30, 2008);¹⁷ MedAmerica (application date September 30, 2008);¹⁸ Guarantee Trust Life Insurance Company (application date August 10, 2008);¹⁹ United Security Assurance Company of

¹¹ Ex. 6; Ex. 19.

¹² Testimony of John T. Mackin, Jr.; Ex. 15; Ex. 16; Ex. 17.

¹³ Ex. 20.

¹⁴ Ex. 21.

¹⁵ Ex. 22.

¹⁶ Ex. 23.

¹⁷ Ex. 24.

¹⁸ Ex. 25.

¹⁹ Ex. 26.

Pennsylvania (application date August 14, 2008);²⁰ NCI-Unicare Life & Health Insurance Company (application date August 14, 2008);²¹ Genworth Financial (application date July 25, 2008);²² Allianz Life Insurance Company (application date July 25, 2008);²³ Assurant Health (application date July 22, 2008);²⁴ Humana Health Plan, Inc. (application date July 17, 2008);²⁵ and Arthur J. Gallagher & Co. (application date July 17, 2008).²⁶ The Respondent did, however, disclose the 2001 disciplinary action in all of these applications. He also disclosed the Wisconsin administrative action and the complaint filed by the Meders in his May 2009 applications to Equitable Life & Casualty and Mutual of Omaha Insurance Company.²⁷

Miennert Complaint

10. On November 30, 2007, Respondent visited the home of Dwain and Elsie Miennert in Houston, Minnesota. The Miennerts, who are in their 70s, had returned a postcard to the Pennsylvania Life Agency seeking more information about Today's Options and Medicare Advantage Plans in general. During that meeting, which lasted three hours, Respondent urged the Miennerts to enroll in Today's Options despite their satisfaction with their current coverage obtained through Blue Cross/Blue Shield. Respondent explained the Summary of Benefits for the Today's Options plan and circled some co-pay and premium estimates. Respondent filled out an application for the Miennerts, which they signed, but he did not leave a copy with them. He left only an Explanation of Benefits booklet. Respondent spoke quickly and the Miennerts were confused when he left. Based upon Respondent's representations, the Miennerts believed that the Today's Options plan was part of Medicare, when in fact it is a private policy. They also believed, based on Respondent's representations, that they could cancel the policy at any time and Blue Cross/Blue Shield would have to reenroll them. They felt they were pressured into making a quick decision and that they had no choice but to enroll in the Today's Options plan.²⁸

11. In the days following the meeting with Respondent, the Miennerts compared their Blue Cross/Blue Shield policy with the Today's Options policy and determined that they did not want to switch coverage. On December 10, 2007, Mrs. Miennert called Respondent to stop their enrollment process. Respondent became irate, refused to listen, and screamed at Mrs. Miennert. Respondent did not assist them in cancelling their enrollment and he gave them no instruction as to whom they should call to cancel. Mrs. Miennert eventually hung up on Respondent because he was so angry. Mrs. Miennert then called Medicare to cancel their enrollment in Today's

²⁰ Ex. 27.

²¹ Ex. 28.

²² Ex. 29.

²³ Ex. 30.

²⁴ Ex. 31.

²⁵ Ex. 32.

²⁶ Ex. 33.

²⁷ Exs. 20, 21.

²⁸ Testimony of Dwain Miennert; Testimony of Elsie Miennert; Ex. 106.

Options. The person she spoke with from Medicare told her to call again in one week to confirm the cancellation.²⁹

12. On December 18, 2007, the Miennerts received policy cards in the mail from Today's Options, and Mrs. Miennert called Medicare again to complain about Respondent and the Today's Options plan in general. The person they spoke with at Medicare informed them that their Today's Options plan was going into effect on January 1, 2008, and that their Blue Cross/Blue Shield plan and their Medicare Part D drug coverage would be cancelled. They were also informed that if they cancelled the Today's Options coverage, they would be without drug coverage and would not be able to enroll again until December 2008, with coverage to begin in January 2009.³⁰

13. On December 26, 2007, Mary Botcher, the Miennerts' Blue Cross/Blue Shield insurance agent, assisted them in writing a complaint to the Commissioner about Respondent's high-pressure sales tactics.³¹

Meder Complaint

14. In early 2008, Respondent assisted in the training of Christine Finley, a new Pennsylvania Life insurance agent. Finley accompanied Respondent on six or seven sales calls.³²

15. On January 10, 2008, Respondent and Finley visited the home of Harold and Lillian Meder in New London, Minnesota. The Meders had returned a postcard to Pennsylvania Life indicating that they wanted more information about Medicare insurance. The Meders are both in their 80s and have given power of attorney (POA) to their daughter, Barbara Peterson, to manage all their affairs, including insurance. Respondent presented the "Today's Options" plan to the Meders, who told the agents that they had insurance through Blue Cross/Blue Shield and did not need more insurance, and that their daughter was in charge of all decisions regarding their insurance coverage. After a two-hour visit, Respondent persuaded each of the Meders to sign an application, despite their reservations, because they would "probably not qualify," and because he needed proof that he had spoken to them. He also persuaded them to provide checking account information so premiums could be automatically deducted, with the assurance that nothing would be done until the agents were able to speak to their daughter, Barbara Peterson. Finley completed the application forms for the Meders and signed the applications as the selling agent. The Meders signed and initialed the applications in several places, acknowledging that the proposed effective date for the plan was February 1, 2008. The Meders were unaware at the time that the application was actually an enrollment document.³³

²⁹ Test. of D. Miennert; Test. of E. Miennert; Testimony of Mary Botcher.

³⁰ Test. of D. Miennert; Test. of E. Miennert; Ex. 12.

³¹ Test. of M. Botcher; Ex. 12.

³² Test. of E. Evasku; *see also* Ex. 9.

³³ Testimony of Barbara Peterson; Ex. 8.

16. The Meders were not given copies of anything they signed. They were given a "New Member Welcome Process" sheet, advising them to expect a telephone call from the company the next day. When they received the call, the Meders advised the company representative that they did not want to proceed with the application. The company representative transferred the call to someone else, and the Meders repeated that they did not want to proceed with the application. The telephone call was then disconnected. The Meders assumed that their applications had been cancelled. No one affiliated with the Pennsylvania Life agency or Pyramid Life ever called Barbara Peterson regarding the applications signed by her parents.³⁴

17. On January 23, 2008, the Meders received insurance cards from Today's Options in the mail. The Meders then contacted their daughter, Barbara Peterson, for help. Peterson called Pyramid Life on January 23, 28, and 29, 2008, in an effort to cancel the applications before the effective date. She was given inconsistent information about how to cancel the policy and was told at one point that she would need to send copies of her POA documents through the mail because the company did not have a fax number. On January 30, 2008, the Meders sent a written confirmation of their cancellation to Pyramid Life. Each of the Meders' three children made phone calls and wrote letters to Pyramid Life, the Minnesota Attorney General's Office, Respondent, and the Department in an attempt to cancel the Meders' enrollment. Their enrollment in Today's Options was cancelled on March 31, 2008. It appears from the record that their coverage with Blue Cross/Blue Shield was not affected.³⁵

18. Administrative Law Judge Kathleen D. Sheehy concluded that Finley utilized deceptive, dishonest and fraudulent tactics while soliciting clients for the Today's Options plan.³⁶

19. On October 29, 2009, the Commissioner adopted the Findings of Fact and Conclusions of Judge Sheehy, ordered that Finley's license be revoked, and imposed a \$20,000 civil penalty upon her. In the Memorandum attached to the Order, the Commissioner noted that Finley participated in a scheme in which the Meders were persuaded to sign an application form but were told that it was not going to result in a change in their health insurance coverage

Child Support Payments

20. Respondent failed, on several occasions, to pay child support to his ex-wife, and his driver's license was suspended as a result in 1996, 2004 and 2009. He and his ex-wife have reached a repayment agreement and Respondent is currently making payments to her even though his children are now in their 30s and 40s.³⁷

³⁴ Test. of B. Peterson; Ex. 8.

³⁵ Test. of B. Peterson; Ex. 8.

³⁶ *In the Matter of Christine Rene Finley*, OAH Docket No. 3-1004-20159-2, Findings of Fact, Conclusions and Recommendation June 2, 2009.

³⁷ Test. of E. Evasku.

Satisfied Clients and Favorable References

21. Some of the people to whom Respondent sold insurance policies were satisfied with the coverage they obtained through the Respondent and with Respondent's sales tactics and believed that he honestly explained the policy coverage.³⁸ Respondent conducted himself in a lawful and appropriate fashion in some instances, including his interactions with clients Edythe Larimer, Janice Duellman and David Duellman.³⁹

22. Ronald Bjorklund, a close friend of Respondent's who worked with Respondent as a trainee in insurance sales during 2001-02, observed Respondent acting in a professional and courteous fashion during that time period.⁴⁰ Joan Moore, who was trained by Respondent during March 2007 - March 2008, found Respondent to be fair, courteous and informative with potential clients and did not observe him pressure a potential client to enroll.⁴¹ K. Lynn Matthews, who worked with Respondent, found him to be thorough in his research and caring and passionate about his business when she was out in the field with him.⁴²

23. Respondent also provided personal reference letters from Pastors John Soshea and Frank Sanders.⁴³

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 14.50, 45.027, subd. 7(b), and 60K.43, subd. 2(a).

2. Respondent received due, proper, and timely notice of the charges against him, and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. The Commissioner may deny, suspend, or revoke the license of a person or censure a person if the person has engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is licensed or authorized,

³⁸ See, e.g., Testimony of Joan McKenna; Testimony of Leo McKenna; Testimony of Joan Hanson; Ex. 109 (Letter from A. Larey dated June 3, 2010; Letter from Charles and Rosemary Loveless dated May 17, 2010; Letter from Edythe Larimer dated May 25, 2010; Letter from David Duellman dated June 3, 2010).

³⁹ Stipulation of parties during hearing.

⁴⁰ Test. of Ronald Bjorklund.

⁴¹ Ex. 109 (Letter from Joan Moore dated March 8, 2010).

⁴² Ex. 109 (Letter from K. Lynn Matthews dated March 19, 2010).

⁴³ Ex. 109 (letter from John Soshea dated May 22, 2010; Letter from Frank Sanders dated June 2, 2010).

which demonstrates that the licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner.⁴⁴

5. The Commissioner may restrict, censure, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty if the applicant or licensee provides incorrect, misleading, incomplete, or materially untrue information in the licensing application.⁴⁵

6. The Commissioner may restrict, censure, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty if the licensee admits or has been found to have committed any insurance unfair trade practice or fraud.⁴⁶

7. The Commissioner may restrict, censure, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty for having an insurance producer license, or its equivalent, denied, suspended, or revoked, or having been the subject of a fine or any other discipline in any other state, province, district, or territory.⁴⁷

8. The Commissioner may restrict, censure, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty for misrepresenting the terms of an actual or proposed insurance contract or application for insurance.⁴⁸

9. The Commissioner may restrict, censure, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty for failure to comply with an administrative or court order imposing a child support obligation.⁴⁹

10. Insurance producers must report to the Commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency within 30 days of the final disposition of the matter.⁵⁰

11. The Commissioner may restrict, censure, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty for the use of fraudulent, coercive, or dishonest practices, or engaging in conduct that demonstrates incompetence, untrustworthiness, or financial irresponsibility, whether or not involving the business of insurance in Minnesota or elsewhere.⁵¹

⁴⁴ Minn. Stat. § 45.027, subd. 7(a)(4).

⁴⁵ Minn. Stat. § 60K.43, subd. 1(1).

⁴⁶ Minn. Stat. § 60K.43, subd. 1(7).

⁴⁷ Minn. Stat. § 60K.43, subd. 1(9).

⁴⁸ Minn. Stat. § 60K.43, subd. 1(5).

⁴⁹ Minn. Stat. § 60K.43, subd. 1(13).

⁵⁰ Minn. Stat. § 60K.54.

⁵¹ Minn. Stat. § 60K.43, subd. 1(8).

12. Minnesota statutes prohibit persons from engaging in trade practices that are defined or determined to be unfair methods of competition or unfair or deceptive acts or practices in the business of insurance.⁵² The statutes further specify that engaging in fraudulent, coercive, or dishonest practices in connection with the insurance business constitutes an unfair method of competition and an unfair and deceptive act or practice.⁵³

13. Every insurance agent must observe high standards of commercial honor and just and equitable principles of trade in the conduct of the agent's insurance business.⁵⁴ Violations of this chapter subject the violator to the penalties described in Minn. Stat. §§ 72A.22 to 72A.29.⁵⁵

14. Based upon the Respondent's failure to disclose past administrative actions taken against him, the deceptive and dishonest sales tactics he used with the Miennerts and the Meders, his failure to pay child support, and the other misconduct detailed in the Findings above, the Respondent has engaged in conduct that constitutes grounds for the imposition of disciplinary action and/or a civil penalty. Specifically:

- The Respondent has engaged in acts or practices demonstrating that he is untrustworthy to act under the authority or license granted by the commissioner, within the meaning of Minn. Stat. §§ 45.027, subd. 7(a)(4), and 60K.43, subd. 1(8);
- The Respondent provided incomplete information in his 1996 application to the Department to reactivate his license, in violation of Minn. Stat. § 60K.43, subd. 1(1);
- The Respondent has had an insurance producer license disciplined in another state, in violation of Minn. Stat. § 60K.43, subd. 1(9);
- The Respondent failed to inform the Commissioner of the administrative action taken by the State of Wisconsin, in violation of Minn. Stat. § 60K.54;
- The Respondent misrepresented the terms of an actual insurance application, in violation of Minn. Stat. § 60K.43, subd. 1(5);
- The Respondent failed to comply with a court order imposing a child support obligation, in violation of Minn. Stat. § 60K.43, subd. 1(13); and

⁵² Minn. Stat. § 72A.19, subd. 1.

⁵³ Minn. Stat. § 72A.20, subd. 18(b).

⁵⁴ Minn. R. 2795.1000.

⁵⁵ Minn. R. 2795.1900.

- The Respondent engaged in unfair or deceptive acts or practices, in violation of Minn. Stat. §§ 60K.43, subd. 1(7), 72A.19, subd. 1, 72A. 20, subd. 18(b), and Minn. R. 2795.1000.

15. The imposition of disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of the Department of Commerce take adverse action against the Respondent's insurance producer's license and/or impose an appropriate civil penalty.

Dated: August 6, 2010.

s/Barbara L. Neilson

BARBARA L. NEILSON

Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Emmanuel Munson-Regala, Deputy Commissioner, Market Assurance Division, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes. To comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

Failure to Disclose Disciplinary Actions

Respondent admitted most of the allegations regarding failure to disclose past disciplinary actions, and merely attempted to excuse the omissions at issue. He admitted that he did not disclose the Department's 1985 and 1987 disciplinary actions against his license on the applications he submitted to the fourteen insurance entities, but he claimed that there was "an understanding" within the insurance community that it was unnecessary to disclose actions that occurred more than ten or twenty years ago. John Mackin, Jr., a Vice President of Pennsylvania Life Insurance Company, testified that there was no such "understanding" in the insurance field and that, if Respondent had accurately disclosed all of his disciplinary actions, he would not have been hired as an agent for Pennsylvania Life. Mr. Mackin has been in the insurance industry for more than 25 years and his testimony was credible. Moreover, because none of the applications Respondent completed limited the disclosure period to ten or twenty years, Respondent should have disclosed all disciplinary actions against his license on all of his applications, including his application to the State of Wisconsin and his 1996 application to the Department to reactivate his license.

Respondent attempted to explain his failure to report the administrative action taken by the State of Wisconsin against his license in 2007. He testified that he inadvertently checked the wrong box on the application indicating that no disciplinary actions had been taken against him in any other state. He testified that once he wrote an explanatory letter, the State of Wisconsin granted his application for a producer license. However, the Wisconsin Insurance Commissioner granted him the license only after first imposing a 31-day denial of his application, and the Commissioner clearly stated in his letter to Respondent that the 31-day denial constituted an administrative action that Respondent might need to report to each state in which he was licensed. Respondent provided no explanation why he did not report the action to the Department.

Failure to Make Child Support Payments

Respondent also admitted that he was, on a number of occasions, in arrears on his child support payments. He explained that he and his ex-wife had subsequently reached an agreement. He further testified that the amount due had been drastically reduced by the court and that he was current on his payments. But Respondent never explained why he missed the payments, and his conduct violated Minn. Stat. § 60K.43, subd. 1(13).

Deceptive Sales Practices

Respondent did not admit using deceptive or high-pressure sales techniques with any of his customers, including the Miennerts and the Meders. He argued that he adequately explained the policy coverage to both couples and dismissed their confusion as attributable to their age. He also suggested that Ms. Botcher, a competing insurance agent, spurred the complaints that were made by the Miennerts and others. The Administrative Law Judge is not persuaded by Respondent's explanation of what happened during the sales meetings.

The Meders credibly testified that Respondent represented that they needed to complete the application to verify that the meeting occurred, and minimized the significance of the application by informing them that they "probably would not qualify" for the coverage. Respondent also assured them that if they did qualify, they would not be enrolled until he spoke with their daughter, who served as their power-of-attorney. Contrary to Respondent's representations, the Meders' applications were processed immediately and they were enrolled in the new coverage. The Administrative Law Judge concludes that the Respondent's representations to the Meders were misleading and deceptive.

The Miennerts similarly provided persuasive testimony that Respondent spoke very rapidly and did not allow them a chance to fully understand the Today's Options coverage. Once they were able to fully understand the policy coverage and premiums and co-pays, they decided to stop their enrollment. Respondent refused to assist their disenrollment and instead became hostile and irate when Mrs. Miennert phoned him. The Miennerts were enrolled, despite Herculean efforts to stop the enrollment process, and their Blue Cross/Blue Shield coverage was cancelled. It is true, as Respondent argues, that some fault is attributable to the company, Pyramid Life, for an unworkable cancellation policy, but the company's fault does not excuse Respondent's deceptions and strong-arm tactics. His conduct was untrustworthy and unfair.

For all of these reasons, the Administrative Law Judge recommends that the Commissioner take appropriate disciplinary action against the Respondent.

B. L. N.